

continue operating under station license KB77434 after its cancellation.²

5. On March 16, 2005, the Norfolk Office issued a *Notice of Apparent Liability for Forfeiture* to Pembroke in the amount of ten thousand dollars (\$10,000) for the apparent willful and repeated violation of Section 301 of the Act.³ Pembroke filed a response to the *NAL* dated April 14, 2005 requesting cancellation or reduction of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Pembroke's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

7. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.⁷ In its response to the *NAL*, Pembroke admits that it operated two-way radio transmitters on 462.625 MHz. It also admits that it did not have a valid license authorizing it to operate on 462.625 MHz on January 12 and 13, 2005. Thus, based on the evidence, we find that Pembroke willfully⁸ and repeatedly⁹ violated Section 301 of the Act by operating two-way radio

²Pursuant to Section 1.931(b)(5) of the Commission's Rules, licensees of Private Wireless Services may request special temporary authority to operate via the telephone under special limited circumstances, provided a properly signed application is filed within 10 days of such oral request. 47 C.F.R. § 1.931(b)(5). Pembroke called the Wireless Telecommunications Bureau on January 14, 2005, a day after the agent's inspection. However, the Bureau does not have a record of any earlier calls from Pembroke or any record that oral authority to operate beyond the license expiration was requested or granted. Thus, even based on Pembroke's version of events, it did not have authority to operate on January 12 and 13, 2005. Moreover, even if such authority was granted on January 14, 2005, Pembroke did not submit a written application within 10 days of the alleged oral request, as would have been required by the Rules.

³*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532640002 (Enf. Bur., Norfolk Office, March 16, 2005) ("*NAL*").

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 301.

⁸Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section (continued....)

transmitters on 462.625 MHz without a Commission license.

8. Pembroke asserts that the forfeiture should be cancelled or reduced, because 1) the violation was minor; 2) Pembroke made good faith efforts to comply with the Rules; and 3) Pembroke has a history of compliance with the Rules.

9. We disagree with Pembroke that the violation was minor. Pembroke claims that it did not intend to operate without a license, because its station license KB77434 was cancelled due to Commission error. It is irrelevant whether Pembroke believes its license was cancelled in error.¹⁰ Pembroke was informed in a letter from the Wireless Telecommunications Bureau of the Commission dated June 10, 2004 that its license had been cancelled.¹¹ Pembroke was aware of the cancellation, because it submitted a non-timely petition for reconsideration of the cancellation on September 20, 2004. After protesting the cancellation of its license and after it received another letter dated September 30, 2004 affirming the cancellation, Pembroke continued to operate its two-way radio system. Thus, Pembroke had ample warning and notice that it was operating without a license. Even if Pembroke did not know that it was operating without a license, for a violation to be willful, the violator need not intend to violate the Rules; the violator need only consciously or deliberately act or fail to act.¹² Pembroke clearly intended to operate its two-way radio system. Moreover, the license in question, KB77434, when active, did not authorize operation on 462.625 MHz. Pembroke claims that the company it hired to install its communications system told it that it was authorized to operate on 462.625 MHz. Hiring a company to install communications needs, however, does not excuse the owner and operator of the radio equipment from complying with the Rules. Pembroke's license clearly stated that it authorized the licensee to operate only on 461.5625 and 466.5625 MHz. Pembroke knew or should have known that it could not operate on 462.625 MHz. Therefore, we find that this was not a "minor" violation, worthy of a reduction in the forfeiture amount.

10. We also disagree that Pembroke is entitled to a reduction based on good faith efforts to comply with the Rules. As stated above, Pembroke continued to operate its two-way radio system after it was twice notified that its license was cancelled. Although Pembroke stated it submitted the paperwork for a new license to a license application company on December 9, 2004, the application was not filed with the Commission until January 13, 2005, the day the agent contacted Pembroke. The license, WQCE271, was granted on February 10, 2005, but it only authorizes operation on 462.250 and 467.250 MHz. Thus, even though Pembroke took initial steps to obtain a new license prior to the agent's inspection, it did not discontinue its operation pending grant of the license. In addition, the license granted does not authorize operation on 462.625 MHz. Finally, although Pembroke discontinued operation after the agent's inspection on January 13, 2005, licensees are expected to take prompt remedial

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503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁰We note that license KB77434 was cancelled after Pembroke failed to respond to three separate audit letters, issued October 12, 2001, April 19, 2002, and February 27, 2004. Even if Pembroke submitted the requested information in May of 2002, as Pembroke alleges, the Commission has no record of the submission and Pembroke was informed of this fact by the February 27, 2004 audit letter. Pembroke failed to respond to the February 27, 2004 letter, and the Commission canceled its license. Thus, the license was not cancelled by mistake, as Pembroke alleges.

¹¹Notice of the cancellation was also provided in a Public Notice, DA 04-1553, dated June 8, 2004.

¹²See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

action to comply with the Rules after being informed of a violation.¹³ We conclude that Pembroke's actions do not constitute good faith efforts worthy of a reduction in the forfeiture amount.

11. Finally, we disagree that Pembroke is entitled to reduction based on history of compliance with the Rules. Pembroke does appear to have a history of compliance with the Rules as it had not received a Notice of Violation or Notice of Apparent Liability prior to March 16, 2005. However, Pembroke ignored several notices that its license, KB77434, was cancelled and continued to operate its two-way radio system. Pembroke also operated its system before its current license, WQCE271, was granted. After considering Pembroke's blatant disregard for the Rules, we conclude that a reduction of the forfeiture amount based on a history of compliance with the Rules is inappropriate.¹⁴

12. We have examined Pembroke's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Pembroke willfully and repeatedly violated Section 301 of the Act. We find no basis for cancellation or reduction of the \$10,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁵ Pembroke Square Associates **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

¹³See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

¹⁴See *All American Telephone, Inc.*, 16 FCC Rcd 16601 (2001).

¹⁵47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶47 U.S.C. § 504(a).

¹⁷See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Pembroke Square Associates at its record of address and its attorney, Barry Randolph Koch, Inman & Strickler PLC, 575 Lynnhaven Parkway, Suite 200, Virginia Beach, VA 23452-7350.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau